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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,520	03/17/2004	Andrew Fraser	040225-000000US	5488
20350 7590 11/17/2009 TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834				
EXAMINER				
PHAM, HUNG Q				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/803,520

**Applicant(s)**

FRASER ET AL.

**Examiner**

HUNG Q. PHAM

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 6, 10-21, 27 and 28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 6, 10-21, 27 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/10/2009 has been entered.

### ***Response to Arguments***

- The objection to the Specification, the rejection of claim 1 under 35 U.S.C. § 112, 1<sup>st</sup> paragraph, have been withdrawn in view of the amendment.
- Applicant's arguments with respect to the rejection under 35 U.S.C. § 102 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Regarding claim 21, the clause *the output* references to other items in the claims. It is unclear what item is being referenced.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1, 6, 10-21, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Jacobi et al. [US 6,064,980].**

Regarding claim 1, Jacobi teaches a data management system for identifying patterns in data related to an item for which a recommendation may be provided from the system to a user, the system comprising a host computer system having:

*a construct repository configured to retain a plurality of construct pair reference sets, each construct pair reference set comprising at least a first descriptive term and a second descriptive term, the first descriptive term and the second descriptive term selected according to personal construct theory to represent contrasting opinions* (As taught by Jacobi, a plurality of templates as shown in FIGS. 3 and 4 (Jacobi, Col. 6-Line 40→Col. 7-Line 30) are presented to a user. The templates include multiple pair reference set with a first descriptive term, e.g., Book Categories and Book Titles, and second descriptive term, e.g., Frequently, Sometimes, OK, Liked It, Loved It... to establish a user rating profile. The user rating profile is stored in database 54 as in FIG. 1. The Jacobi's teaching as discussed indicates the claimed limitation, *a construct repository configured to retain a plurality of construct pair*

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*reference sets, e.g., the database 54 as in FIG. 1 is configured to store multiple title/rating pairs, each construct pair reference set comprising at least a first descriptive term and a second descriptive term, e.g., each title/rating pair comprising a title and a rating, the first descriptive term and the second descriptive term selected according to personal construct theory to represent contrasting opinions, e.g., the title and rating are selected according a set of facts using different book titles to represent contrasting opinions such as OK, Liked It, Loved It...);*

*a graphical user interface configured to display a user-selectable control related to a construct pair reference set of the plurality of construct pair reference sets (Jacobi, FIG. 4, the arrow button for selecting a particular rating is considered as being equivalent to a user-selectable control related to a construct pair reference set of the plurality of construct pair reference sets) and further configured to receive a particular user's opinion selected between the first descriptive term and the second descriptive term (Jacobi, FIG. 4, a particular user's opinion such as low rating between "The Firm—OK" is selected), the graphical user interface further configured to store in the construct repository the opinion received from the particular user for the construct pair reference set (Jacobi, FIG. 1); and*

*an analysis engine configured to analyze relationships among a plurality of received user opinions for construct pair reference sets retrieved from the construct repository in which the analysis engine analyses responses made by the user using a statistically based process to identify a set of users to which the particular user belong (Jacobi, Col. 5-Lines 1-12 and Col. 1-Lines 25-40) and to generate a recommendation for the particular user related to an item based on the degree to which the particular user is proximal in profile to others in the set based on which users have a similar personal construct scores (Jacobi, Col. 5-Lines 1-12; Col. 1-Lines 25-40 and Col. 7-Lines 30-41).*

Regarding claim 6, Jacobi teaches all of the claimed subject matter as discussed above with respect to claim 1, Jacobi further discloses *the graphical user interface is configured to receive the user's opinion about the aspect of the item in a number of discrete selectable steps within a range between the*

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*first descriptive term and the second descriptive term, that number of steps being referred to as a "mesh"*  
(Jacobi, FIGS. 3-5).

Regarding claim 10, Jacobi teaches all of the claimed subject matter as discussed above with respect to claim 1, Jacobi further discloses *the user can input a value representative of their opinion by adjustment of a position of a control provided by the graphical user interface* (Jacobi, FIGS. 3-4).

Regarding claim 11, Jacobi teaches all of the claimed subject matter as discussed above with respect to claim 1, Jacobi further discloses *the results of the analysis are further used to deduce a set of information items of interest to a particular user* (Jacobi, Col. 5-Lines 1-12 and FIG. 5).

Regarding claim 12, Jacobi teaches all of the claimed subject matter as discussed above with respect to claim 1, Jacobi further discloses *the system executes on a server that communicates with a user over a network link* (Jacobi, FIG. 1, Col. 4-Lines 24-36).

Regarding claim 13, Jacobi teaches all of the claimed subject matter as discussed above with respect to claim 1, Jacobi further discloses *a user data input component that executes on a remote host system* (Jacobi, FIGS. 1 and 3-4).

Regarding claim 14, Jacobi teaches all of the claimed subject matter as discussed above with respect to claim 13, Jacobi further discloses *the data input component is represented in the display generated by a web browser* (Jacobi, FIG. 3-4 and Col. 4-Lines 34-35).

Regarding claim 15, Jacobi teaches all of the claimed subject matter as discussed above with respect to claim 13, Jacobi further discloses *the data input component is generated by an applet that is downloaded to the remote host from the server* (Jacobi, FIG. 3-4 and Col. 4-Lines 34-35).

Regarding claim 16, Jacobi teaches all of the claimed subject matter as discussed above with respect to claim 1, Jacobi further discloses *the construct pair reference set is obtained through use of a repertory grid in accordance with personal construct theory* (Jacobi, FIG. 3-4).

Regarding claim 17, Jacobi teaches all of the claimed subject matter as discussed above with respect to claim 1, Jacobi further discloses *incomplete data is processed by matching those parts of the data that are present with characteristics of existing data* (Jacobi, Col. 7-Lines 30-33, Col. 5-Lines 1-12 and Col. 1-Lines 25-40).

Regarding claim 18, Jacobi teaches all of the claimed subject matter as discussed above with respect to claim 17, Jacobi further discloses *the incomplete data is subject to discriminant analysis* (Jacobi, Col. 7-Lines 30-33).

Regarding claim 19, Jacobi teaches all of the claimed subject matter as discussed above with respect to claim 1, Jacobi further discloses *data is subject to a process of linearisation prior to its being analysed* (Jacobi, FIGS. 3-4).

Regarding claim 20, Jacobi teaches all of the claimed subject matter as discussed above with respect to claim 19, Jacobi further discloses *the process of linearisation includes conversion of non-numeric data to a numeric form* (Jacobi, FIGS. 1 and 4).

Regarding claim 21, Jacobi teaches all of the claimed subject matter as discussed above with respect to claim 1, Jacobi further discloses *users are the customers of a business and the output includes predictive information as to the future purchasing behaviour of the customers* (Jacobi, Col. 4-Lines 13-23 and FIG. 5).

Regarding claim 27, Jacobi teaches all of the claimed subject matter as discussed above with respect to claim 1, Jacobi further discloses *the item is selected from one of a person, a product, a service, a topic, a concept, an event, and an experience* (Jacobi, FIG. 5).

Regarding claim 28, Jacobi teaches all of the claimed subject matter as discussed above with respect to claim 1, Jacobi further discloses *the user-selectable control is configured to have a discrete number of settings for receiving the user's opinion about the aspect of the item* (Jacobi, Col. 6-Lines 51-65).

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUNG Q. PHAM whose telephone number is 571-272-4040. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JAMES K. TRUJILLO can be reached on 571-272-3677. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications



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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HUNG Q. PHAM/  
Primary Examiner, Art Unit 2159

HUNG Q. PHAM  
Primary Examiner  
Art Unit 2159

November 13, 2009